HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.26691 OF 2006

Between:

K.Prasanth Kumar and another. ..... Petitioners.

AND

District Collector,
Ranga Reddy District
and others. .....Respondents

:: O R D E R ::

Counsel for the petitioner : Sri Rajagopalan Tayan for Sri B.Vijaysen REddy

Counsel for respondent Nos.1 and 2 : Government Pleader for Municipal Administration.

Counsel for respondent No.3 : Sri P.Radhakrishna, Standing Counsel for Tandur Municipality.

22nd December, 2006

Per G.S.Singhvi, C.J.

In this petition, the petitioners have prayed for issue of a mandamus to respondent Nos.1 to 3 to take steps for removal of unauthorized structure erected by respondent No.4 on land measuring 2,400 square yards in Survey No.135 of Tandur Town, Ranga Reddy District.

Petitioner No.1, K.Prasanth Kumar, claims to be doing some business and petitioner No.2, Ahmed Khan is a Councillor of Tandur Municipality. They have jointly invoked the jurisdiction of this Court under Article 226 of the Constitution of India for issue of a direction to the official respondents to demolish the alleged unauthorized structure raised by respondent No.4, The Tandur Congress Committee. In the affidavit filed by petitioner No.2 – Ahmed Khan, it has been averred that respondent No.4 is in possession of government land measuring 2400 square yards comprised in Survey No.135 of Tandur Town; that without obtaining permission from Tandur Municipality, the said respondent has started construction, and that despite complaint dated 7-11-2006 lodged by the Councillors belonging to Telugu Desam Party, Director, Town Planning and other official respondents have not taken steps to demolish the illegal construction. Sri Ahmed Khan has further averred that Smt.Shanta Bai filed O.S.No.96 of 2006 in the Court of Junior Civil Judge, Tandur with the complaint that respondent No.4 has encroached her land. He has then averred that the issue regarding illegal construction made by respondent No.4 was raised in the meeting of the Municipal Councillors held on 31-10-2006, but the official respondents have not taken action to stop the illegal construction and demolish the construction already made. Sri Ahmed Khan has relied on some paper reports regarding the alleged illegal construction and made the following averments in paragraph 4 of his affidavit:

> "We reliably learnt that the land under the possession of the 4th respondent earlier belongs to the government. It is not known under what capacity the 4th respondent is in possession of the property. It is claimed by respondent No.4 that the government has assigned the schedule land to them for the purpose of construction of a party office. To our knowledge and information, this piece of land still vets in government and so far there is no order of assigning these lands in favour of the 4th respondent. Surprisingly, a commercial structure is being raised by the 4th

respondent throwing all norms to winds. Not only that construction is taken up without any prior sanction, the structures are made by the 4th respondent without leaving mandatory open spaces and set backs. Since we reliably learnt that the 4th respondent does not have any title to the property, we have made 1st respondent as a party to this writ petition for taking appropriate action for resumption of land from the possession of the 4th respondent. The construction was taken up by the 4th respondent in the month of August, 2006 itself. The 3rd respondent issued a letter dt.24-11-2006 informing the 2nd petitioner that the 4th respondent has paid planning fees of Rs.20,430/- vide challan No.7079, dt.5-10-2006 for building permission and the same is under process. It is thus clear that the construction is taken up by the 4th respondent without any sanction and, therefore, unauthorized structures are liable to be demolished. The property under possession of the 4th respondent is a prime property and can be used for any public purpose. But allowing a political party to possess the property and make illegal constructions despite the complaints being made by the petitioners is nothing but gross abuse of official position. The respondents No.1 to 3 coming under the influence of Chairman of Tandur Municipal Council who also belongs to the Congress Party and local Congress MLA are deliberately not taking any action against the 4th respondent and are mute spectators to this illegal construction of the 4th respondent. The illegal construction of the 4th respondent is widely reported in daily news papers, but despite the same, the official respondents failed to act. If directions are not issued to the respondents No.1 to 3to take action against the 4th respondent for illegal construction in the property admeasuring 2400 sq.yds in Sy.No.135 of Tandur Town, Ranga Reddy and for resumption of land, public in general of Tandur Town would be put to irreparable loss and injury. It is also just and necessary to grant interim directions to the respondents No.1 to 3 to take action against the 4th respondent for removal of unauthorized construction pending disposal of the writ petition."

We have heard learned counsel for the parties and perused the record. In our opinion, the writ petition is liable to be dismissed because the petitioners have not produced any tangible material before the Court to show that the construction depicted in the photographs annexed with the writ petition is being raised by respondent No.4 and that too without getting the building plan sanctioned from the competent authority. The averments contained in the affidavit of Sri Ahmed Khan and representation dated 7-10-2006 give an impression that the petitioners are espousing the cause of Smt.Shanta Bai, whose land is said to have been encroached by respondent No.4 and who has filed suit in the Court of Junior Civil Judge, Tandur. This is evinced from the contents of representation dated 7-10-2006 sent by petitioner No.2 and six others to respondent No.2, the relevant potion of which is extracted below:

> "That, the Tandur Congress Committee is trying to encroach the land belongs to Smt.Shanti Devi. The Tandur Congress Committee instead of constructing on the land belongs to them, illegally encroaching into the land in Sy.No.137 of Tandur which exclusively belongs to Smt.Shanta Devi. The said Smt.Shanta Devi filed a suit before the Junior Civil Judge, Tandur in O.S.No.96 of 2006 for interim injunction and same is pending. The said case is filed against Tandur Congress Committee as they are trying to encroach into the land of Smt.Shanta Devi."

In our considered view, the petitioners cannot be heard to make a complaint against the alleged encroachment of land belonging to Smt.Shanta Bai by respondent No.4, more so because the suit filed by her is now pending in the Court of Junior Civil Judge, Tandur.

With the above observations, the writ petition is dismissed leaving the petitioners free to apply for their impleadment as parties in the suit filed by Smt.Shanta Bai or file an independent suit for passing a decree of demolition of the alleged illegal construction being raised by respondent No.4.

As a sequel to dismissal of the writ petition, WPMP.Nos.34290

and 34291 of 2006 filed by the petitioners for interim relief are also dismissed.

G.S.SINGHVI, C.J.

22nd December, 2006

C.V. NAGARJUNA REDDY, J.

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